IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8386 of 1998

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINBHAI D PATEL

Versus

MANAGING DIRECTOR

Appearance:

MR PS CHARI for Petitioners

MR BR GUPTA for Respondent No. 1

MR HS MUNSHAW for Respondent No. 1-4

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/09/2002

ORAL JUDGEMENT

1. The two petitioners herein have filed the present petition under Article 226 of the Constitution of India, substantially for the purpose of obtaining their absorption as regular employees by the respondent. There is no controversy that each of the petitioners was a contractual employee, and apparently held such contractual employment for three years or slightly over three years. Although the prayer made in para 18(a)

seeks a declaration that "the petitioners are entitled to regularisation, permanency and wages of regular and permanent employees ...", this is in effect a prayer for absorption into the cadre of regular employees of the respondent Corporation.

2. It is well settled law that the courts in exercise of their jurisdiction under Article 226 of the Constitution of India cannot direct absorption against the employer, particularly against the State and Corporations run by the State, where such a direction would require the State to create supernumerary posts. On the facts of the case as particularly emphasised in the respondent's affidavit in reply, all the regular and sanctioned posts are occupied, that sanction for additional posts has been refused a number of times, and that on the contrary the State Government has issued directions for effecting the economy.

3. However, the petitioners have asserted in para 5 of the petition that the respondent Corporation had taken a decision to regularise persons who have completed three years of service, however, unfortunately till today the services of the petitioners have not been regularised. This assertion made by the petitioners has not been denied by the respondents in their affidavit in reply. It would, therefore, appear that the respondent Corporation has in fact taken such a decision, whether it is in the form of a Board Resolution or has resulted in a policy document, or in any other form. It would, therefore, appear that the petitioners would be entitled to be considered under such a policy.

4. In fact the petitioners have also asserted in para 12 of the petition that the cases of certain drivers identified by name, are being treated as regular drivers, and also specified certain seven persons by name who are being treated as regular clerks, but the petitioner no.1 and petitioner no.2 have been deprived of such regularisation (in their respective classes). To this assertion the respondent Corporation has dealt with the names of the drivers specified by the petitioner in their affidavit in reply. It is sought to be contended in the said affidavit, in a vague and general manner, that the drivers referred to by the petitioner in the petition are regularly selected drivers and have joined their services at least 20 to 25 years back. However, this affidavit in reply does not deal with the five drivers identified by name by the petitioners in para 12 of the petition. Even otherwise, what is required to be noted is that the petitioners have identified seven similarly situated

contractual clerks who are treated as regular clerks, whereas petitioner no.2 has been deprived of such equal treatment. This assertion by the petitioners in respect of these seven clerks identified by name have not been dealt with at all in the respondent's affidavit in reply.

5. It would, therefore, appear that each of the petitioners, in their respective category, would be entitled to be considered for absorption as a regular employee in the light of the decision taken by the respondent Corporation referred to in para 5 of the petition, irrespective of the financial state of the respondent.

6. It is, therefore, held and directed that each of the two petitioners shall be considered by the respondent Corporation for absorption as a regular employee, in their respective categories, on the basis of the policy decision referred to in para 5 of the petition.

7. This petition is, therefore, allowed to the aforesaid extent. Accordingly rule is made partly absolute with no order as to costs.

8. It is clarified that the interim order which presently operates in favour of the petitioners shall continue to operate till the case of each of the petitioners is taken up for consideration in the light of the present decision and the corresponding decision taken thereon.

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